



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-13601 Manufacturers and processors for hire -- sales and use tax exemption for machinery and equipment**

Date last adopted/issued: **May 17, 2000**

Reviewer: **Allan Lau**

Date review completed: **May 12, 2004**

Briefly explain the subject matter of the document(s):

Rule 13601 explains the sales and use tax exemption to manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or a research and development operation, as well as to third parties engaged in testing for manufacturers or processors for hire of M&E used directly in a testing operation. (The exemption also includes charges for installing, repairing, cleaning, altering, or improving the machinery and equipment, as well as charges for repair and replacement parts.) Exemption certificates are required. The rule also explains who may take the exemption and what is/is not eligible for the exemption, and it defines the "useful life" threshold, the "used directly" criteria, and the "majority use" threshold.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)



	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

This rule implements a complex set of statutes and is therefore necessary to comply with the statutes.

This rule explains a tax exemption for qualifying manufacturers and processors for hire on purchases of qualifying machinery and equipment, and such exemption is intended to attract or retain businesses in Washington State.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?



If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

RCW 82.01.060(2) and 82.32.300 provide Department of Revenue sufficient authority to adopt this document.

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

Department of Revenue has exclusive authority to administer tax exemptions provided by statute.



7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

RCW 82.08.02565 and 82.12.02565

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

ETA 2012.08.12.13601 Manufacturers’ Machinery and Equipment Exemption

**ETA 2012-9S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Prototypes**

**ETA 2012-8S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Computers**

**ETA 2012-7S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Buildings, Fixtures, and Support Facilities**

**ETA 2012-6S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Manufacturing Site**

**ETA 2012-5S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Design and Product Development**

**ETA 2012-4S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Devices**

**ETA 2012-3S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption
Electrical Apparatus and Utility Systems**

ETA 2012-2S.08.12.13601 Manufacturers’ Machinery and Equipment Exemption



Pollution Control Equipment

ETA 2012-1S.08.12.13601 Manufacturers' Machinery and Equipment Exemption Rental of Tangible Personal Property and Rental of Equipment with an Operator

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **None**

Appeal Division Decisions (WTDs):

Det. No. 01-130R, 23 WTD 1 (2004) -- pea combines used in farmers' fields to strip pea pods from vines and to de-pod peas were engaging in harvesting activities, not manufacturing activities (no M&E exemption)

Det. No. 03-0078, 22 WTD 223 (2003) -- operation of a controlled atmosphere storage facility is expressly excluded from the definition of manufacturing; controlled atmosphere storage facility is a building, not a M&E

Det. No. 02-0142, 22 WTD 90 (2003) -- software used to automatically and electronically transfer design drawings into joinery machinery cutting settings (no manual effort involved) was used directly in manufacturing operation

Det. No. 01-102, 21 WTD 251 (2002) -- lessees of concrete mixer trucks must provide taxpayer/lessor with exemption certificates, even though sales of concrete mixer trucks to manufacturers or processors for hire do not need exemption certificates to support majority use under Rule 13601

Det. No. 99-256, 20 WTD 494 (2001) -- engine re-manufacturer producing engines for sale are engaged in manufacturing; majority use required for M&E exemption when certain engines re-manufactured are owned by customers (not for sale to customers); industrial fixtures and support facilities becoming affixed to or part of the building may be eligible for M&E exemption

Det. No. 00-187, 20 WTD 272 (2001) -- conditioning of seed for use in planting is not a manufacturing activity (no M&E exemption)

Det. No. 01-007, 20 WTD 214 (2001) -- merely providing a room or other interior enclosures housing M&E and performing primarily wall/ceiling functions are not support facilities or industrial fixtures; insulated wall panels, although they make a building's refrigeration system more efficient and help keep out airborne contaminants, do not "control or regulate" tangible personal property, nor do they "act upon or interact" with an item of tangible personal property; equipment that emits refrigerated air to maintain frozen food in a frozen state "acts upon or interacts with" the frozen food; rulings on electrical utility systems overruled by ETA 2012-3S.08.12.13601

Det. No. 00-138, 20 WTD 167 (2001) -- feller bunchers used to cut trees are used in extraction activities, not manufacturing; log yarders and log loaders are used after the extraction activity has ended, in which they qualify for manufacturing M&E exemption

Det. No. 00-104, 20 WTD 75 (2001) -- AutoCAD and digital equipment, the purpose of which is to produce necessary specifications and schematics to enable the shop machinery to be programmed to make the necessary cuts and alterations to the raw materials and to generate schematics, do not directly control equipment or interact with an item of tangible personal property

Det. No. 00-103, 20 WTD 67 (2001) -- laptop computers essential to test the functioning of the machinery being manufactured qualify for the M&E exemption, because verification of proper connections and internal communication, calibration, and testing of the assembled unit are part of the final stages of the manufacturing operation



Det. No. 00-026, 19 WTD 941 (2000) -- use of racks and trucks in delivery operations outside manufacturing site does not constitute use in the manufacturing operations; use of racks and trucks initially with the majority use as an exempt use qualifies for the M&E exemption

Det. No. 99-339, 19 WTD 885 (2000) -- cement mixer trucks producing concrete at customer's site is not producing tangible personal property (producing items that will become affixed to or installed on the real estate), thus such use is for improving real property and not in a manufacturing operation; majority use test to determine if cements mixer trucks are used more at manufacturing site or outside manufacturing site

Det. No. 99-337, 19 WTD 876 (2000) -- mobile terminals (communication equipment) are used for administrative, not manufacturing, purposes; majority use test applies to computers (used in controlling production of product and in accounting and dispatching functions), as well as to cement mixer trucks

Det. No. 99-296, 19 WTD 594 (2000) -- purchase of a boom/crane attached to a truck and used both on the manufacturing site and off-site at construction sites, qualifies for the M&E exemption, if the majority of its use is on-site

Det. No. 99-288, 19 WTD 582 (2000) -- use of loader at manufacturing site by seller of ready-mix concrete and sand and gravel products, limited to digging, loading, and moving extracted materials from stockpiles to the sorting and washing area, is not use in a manufacturing operation, because only activities taken place after the first screen are considered part of the manufacturing operation

Det. No. 99-325, 19 WTD 515 (2000) -- crushing and/or blending of rock, sand, stone, or gravel are manufacturing activities (with M&E exemption), while mining and quarrying operations are extracting activities; any screening, sorting, piling, or washing of the material taken place in conjunction with crushing or blending, is considered part of the manufacturing activity, if it takes place after the first screen; if there is no separate first screen, only those activities subsequent to the materials being deposited into the screen are considered manufacturing activities

Det. No. 99-306, 19 WTD 502 (2000) -- plates taxpayer purchases for a one-time use do not qualify for the M&E exemption; M&E purchased for occasional use with reasonable expectation, at the time of purchase, based on actual experience of the person claiming the exemption, that it will still be useful for the purpose purchased a year or more, qualify for the M&E exemption

Det. No. 99-310, 19 WTD 377 (2000) -- digesters and de-watering M&E, as well as M&E used in the composting facility, at the wastewater treatment plant, are used directly in a manufacturing operation that produces compost from sewage sludge for sale; M&E used at stages prior to the digesters would not qualify for the M&E exemption because they would not meet a majority use requirement (mainly for liquid disposals)

Det. No. 99-225R, 19 WTD 289 (2000) -- blank printing plates purchased for use in an intermediate step in the printing process, are exempt as M&E used directly in a manufacturing if they meet the one-year useful life requirement and not for one-time use

Attorney General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

WAC 458-20-251 Sewerage collection and other related activities



WAC 458-20-24001 Sales and use tax deferral -- Manufacturing and research/development activities in distressed areas -- Applications filed after July 31, 1999

WAC 458-20-24003 Tax incentives for high technology businesses

WAC 458-20-210 Sales of tangible personal property for farming-- Sales of agricultural products by farmers

WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians

WAC 458-20-136 Manufacturing, processing for hire, fabricating

WAC 458-20-135 Extracting natural products

WAC 458-20-13501 Timber harvest operations

10. Review Recommendation:

- _____ **Amend**
- _____ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- X** **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

There are many ETAs and WTDs that explains and/or supplements the substantive languages given in Rule 13601, but none contradicts with Rule 13601 that warrants revision at this time.



11. Manager action: Date: July 2, 2004

AL Reviewed and accepted recommendation

Amendment priority:

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